

151 FERC ¶ 61,232
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Natural Gas Pipeline Company of America LLC

Docket Nos. CP14-548-000

Devon Gas Services, L.P.

CP14-547-000

ORDER AUTHORIZING ABANDONMENT AND DETERMINING
JURISDICTIONAL STATUS OF FACILITIES

(Issued June 18, 2015)

1. On September 2, 2014, Natural Gas Pipeline Company of America LLC (Natural) filed an application under section 7(b) of the Natural Gas Act (NGA)¹ for authority to abandon by sale to Devon Gas Services, L.P. (Devon) certain natural gas pipeline and appurtenant facilities located in Texas and Oklahoma known as the Segment 1 Facilities. Concurrently, Devon filed a request for a declaratory order determining that upon transfer to Devon, the subject facilities will be non-jurisdictional gathering facilities exempt from the Commission's jurisdiction under NGA section 1(b).²

2. For the reasons discussed below, the Commission grants Natural's requested abandonment, subject to conditions, because the proposed abandonment is permitted by the public convenience or necessity. The Commission also finds that upon acquisition and modification by Devon, the facilities will perform a gathering function exempt from the Commission's jurisdiction under section 1(b) of the NGA.

¹ 15 U.S.C. § 717(b) (2012).

² *Id.*

I. Background

3. Natural is a Delaware limited liability company and a natural gas company as defined by NGA section 2(6).³ Natural's transmission system consists of the Amarillo mainline (Amarillo Line) and the Gulf Coast mainline (Gulf Coast Line), as well as the A/G Line connecting the two mainlines. The Amarillo Line extends from gas producing areas in North Central Texas, Southwest Texas, Southeast New Mexico, Southwest Oklahoma and the Panhandle areas of Texas and Oklahoma through the States of New Mexico, Texas, Oklahoma, Kansas, Nebraska, Iowa and Illinois. It terminates at points in and near the metropolitan Chicago area. The Gulf Coast Line extends from the offshore and onshore gas producing areas of South Louisiana and the Gulf Coast of Texas through the States of Louisiana, Texas, Arkansas, Missouri and Illinois. The Gulf Coast Line also terminates at points in and near the metropolitan Chicago area, with delivery points in common with the delivery points on the Amarillo Line. The A/G Line, which connects the Amarillo Line and the Gulf Coast Line, runs southeast from Carter County, Oklahoma to Cass County, Texas.

4. Devon is a Texas limited partnership with its principle office in Oklahoma City, Oklahoma. Devon is a subsidiary of Devon Energy Corporation, an independent energy company engaged in the exploration, development, and production of crude oil, natural gas, and natural gas liquids. Devon owns and operates midstream assets and purchases and sells natural gas throughout the United States. Devon gathers raw natural gas and processes that gas at third party plants.

A. Natural's Proposed Abandonment

5. Natural proposes to abandon certain facilities located on Segment 1 of Natural's system, in Wise and Montague Counties, Texas, and Love and Carter Counties, Oklahoma, by sale to Devon. Specifically, Natural proposes to abandon:

- A portion of Natural's Oklahoma Extension No. 1 (OE No. 1) Line consisting of approximately 92.3 miles of 20-inch pipeline originating at a point in Wise County, Texas, and traversing Montague County, Texas, and Love and Carter Counties Oklahoma (Segment 1) and appurtenances.⁴

³ *Id.* at § 717a(6) (2012).

⁴ *Natural Gas Pipeline Co. of America*, 16 FPC 80 (1956). The facilities were originally constructed in 1957 to provide access to natural gas supplies produced in Jack and Wise Counties, Texas. In later years, the subject facilities were used to attach gas supply from various other production fields, including production fields located in Texas and Oklahoma.

- Compressor Station No. 155 (CS 155), located in Wise County, Texas.⁵
- An 8-inch tap that connects Segment 1 to Natural's 12-inch lateral in Love County, Oklahoma (Love County Lateral).⁶
- A 3-mile, 10-inch lateral, and appurtenances located in Wise County, Texas (Atlanta Lateral).⁷
- Various taps and meters on Segment 1.⁸

These facilities are collectively referred to as the Segment 1 Facilities.

6. In support of its requested abandonment, Natural explains that as a result of its Integrity Management Program, it discovered numerous Segment 1 anomalies and defects caused by external pipe corrosion. Since 2006, Natural has spent \$6.4 million on pipeline repairs, but starting in October 2011, in order to ensure the continued safe operation of Segment 1, it began reducing its pipeline pressure each year.⁹ Natural

⁵ *Natural Gas Pipeline Co. of America*, 111 FERC ¶ 62,236 (2005).

⁶ *Natural Gas Pipeline Co. of America*, 23 FPC 614 (1960). The Love County Lateral is connected to Segment 1 approximately 36 miles south of Compressor Station 801 (CS 801). The Willis, Lake Murray, and Madill Laterals connect directly or indirectly to the Love County Lateral. Natural Application at 8, n.15.

⁷ *Natural Gas Pipeline Co. of America*, 24 FPC 222 (1960) (granting temporary authorization on June 20, 1958 and permanent authorization on August 12, 1960).

⁸ See Appendix B.

⁹ Natural has made the following pipeline pressure reductions: from 936 pounds per square inch gage (psig) to 910 psig in October 2011; to 825 psig in February 2012; to 780 psig in August 2012; to 660 psig in January 2013; and to 561 psig in January 2014. Natural Application at 13. Natural also planned to reduce pressures to 505 psig in January 2015. Natural December 9, 2014 Response to Data Request at 17.

claims that these pressure reductions were consistent with Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations.¹⁰

7. In January 2014, Natural reduced the pressure on Segment 1 from 660 psig to 561 pounds per square inch gauge (psig), and, as a result, was unable to physically move gas northbound out of Segment 1 into its A/G Line. Consequently, Natural requires nominations at delivery points on Segment 1 to be at least equal to or greater than nominations at receipt points on Segment 1. In order to address Segment 1's continuing deterioration, Natural claims that it will need to implement additional pressure reductions each year. Natural's latest pressure reduction to 505 psig was scheduled to occur in January 2015.¹¹

8. Natural states it will need to implement additional pressure reductions to ensure the continued safe operation of Segment 1. This situation prompted Natural to evaluate various options with regard to the future operation of Segment 1: (1) repair or replace Segment 1; (2) abandonment in place; or (3) sale to a third party. Natural determined that replacing 92.3 miles of 20-inch pipe would cost in excess of \$200 million. Natural claims that neither the current volumes being transported on Segment 1 nor interest in future transportation on Segment 1 are at sufficient levels to justify such an investment. Natural states that the second alternative, abandonment in place, would remove facilities from service that might be of use to other market participants. Consequently, Natural proposes to abandon the Segment 1 Facilities by sale.

9. Segment 1 was designed to provide up to 193,000 Dth per day of firm transportation service.¹² As of January 1, 2014, Natural had approximately 60,852 Dth per day of firm transportation service under contract with shippers with primary receipt points on Segment 1. Utilization averaged 25,308 Dth per day for 2013.¹³ In January 2014, Natural commenced negotiations with the affected shippers in an effort to modify their agreements and has successfully concluded negotiations with all of the affected firm shippers. Specifically, all of Natural's firm shippers with primary receipt points on Segment 1 have agreed to modify their firm transportation agreements to delete their

¹⁰ Natural cites 49 C.F.R. § 192.613(b) (2014), which permits a pipeline operator to reduce the maximum allowable operating pressure if a pipeline is determined to be in an unsatisfactory condition and the segment cannot be reconditioned or phased out. *Id.* at 19.

¹¹ *Id.* at 17.

¹² Natural February 20, 2015 Response to Data Request at 5.

¹³ Natural Application at 15.

primary receipt points on Segment 1 and add primary receipt points on other parts of Natural's system. There is only one firm shipper, Brazos Electric Power Cooperative (Brazos Electric), with a primary delivery point on Segment 1. Brazos Electric's firm transportation agreement provided for a Maximum Daily Quantity (MDQ) of 10,000 Dth per day. Brazos Electric initially protested Natural's application, but later conditionally withdrew its protest.

10. Pursuant to the terms and conditions of a January 27, 2014 Asset Purchase Agreement between Natural and Devon, Natural proposes to abandon its Segment 1 Facilities by sale to Devon. Upon receipt of the requisite abandonment authorizations sought herein, Natural will transfer title of the Segment 1 Facilities to Devon, and sever the connections between Segment 1 and CS 801 and the Love County Lateral.

B. Devon's Request for Declaratory Order Disclaiming Jurisdiction

11. Devon proposes to reconfigure the Segment 1 Facilities to operate as a gathering system. Rather than carrying processed gas from the Bridgeport Plant¹⁴ downstream for interstate transportation, Devon intends to reverse the flow of the Segment 1 Facilities to gather rich unprocessed gas from various production areas¹⁵ to the Bridgeport Plant for processing and ultimately to interstate and intrastate markets.

12. Devon requests that the Commission declare that these facilities will function as non-jurisdictional gathering facilities pursuant to Section 1(b) of the NGA. Devon asserts that it will meet the criteria used in the Commission's primary function test for determining whether facilities are gathering facilities.

¹⁴ EnLink Midstream Services, LLC, a Devon affiliate, owns and operates the Bridgeport Plant. The Bridgeport Plant has 790 MMcf per day of total processing capability. Devon has a long-term agreement to process gas at the Bridgeport Plant. Devon Petition at 3, n.2.

¹⁵ Devon states that the Segment 1 Facilities are ideally located to enable the gathering of unprocessed gas production from: (i) the South Central Oklahoma Oil Province (SCOOP); (ii) the Anadarko-Woodford production area located in Central Oklahoma which includes the multi-horizon play referred to as the STACK; (iii) the Mississippian Formation in Northern Oklahoma and Southern Kansas; and (iv) other producing areas along its route. Devon Petition at 6.

II. Notice, Interventions, Protests, Other Pleadings, and Data Requests.

13. The Commission noticed Devon's petition for a declaratory order in Docket No. CP14-547 in the Federal Register on September 12, 2014.¹⁶ The Commission noticed Natural's application in Docket No. CP14-548 in the Federal Register on September 17, 2014.¹⁷ The parties listed in Appendix A filed timely motions to intervene.

14. Brazos Electric, Wise County Power Company, LLC (WCPC), and Targa Gas Marketing LLC (Targa) each filed protests to Natural's abandonment application. On March 31, 2015, Brazos Electric filed a motion to conditionally withdraw its pleadings.¹⁸

15. WCPC and Targa are existing interruptible shippers on Segment 1. Both argue that the proposed abandonment would disrupt their transportation services and ask the Commission to require Natural to provide continued service. They also claim that Natural has improperly reduced its certificated capacity through the safety-related pressure reductions. Each asks that the Commission weigh its interests as if it were a firm shipper. WCPC also requested an evidentiary hearing to consider issues involving Natural's maintenance of Segment 1.

16. On October 16, 2014, Natural filed an answer to WCPC's and Targa's protests. WCPC responded to Natural's answer on October 31, 2014, and Natural filed a second answer on November 17, 2014.

17. On November 17, 2014, Commission staff requested additional information from Natural, including: flow diagrams and hydraulic pipeline models for both existing and proposed conditions; the engineering study and construction costs for the option to repair or replace Segment 1; and more information on Natural's pressure reductions. Natural submitted its response on December 9, 2014. On February 20, 2015, Commission staff sent a second request asking for information on Natural's certificated capacity on Segment 1. Natural submitted its response on February 25, 2015.

¹⁶ 79 Fed. Reg. 54,705.

¹⁷ 79 Fed. Reg. 55,781.

¹⁸ After reaching a settlement with Natural, Brazos Electric filed its withdrawal but conditioned that withdrawal on the Commission approving Natural's abandonment order. Brazos Electric March 31, 2015 Notice of Conditional Withdrawal of Pleadings at 2. Brazos Electric also seeks a waiver of Rule 216(b), 18 C.F.R. § 216(b) (2014), which provides that the withdrawal of any pleading is effective after 15 days of filing absent a motion in opposition and Commission action within that period. Since we are granting Natural's application, Brazos' waiver request is moot.

18. We will accept the pleadings identified above that otherwise would be inadmissible under Rule 213(a)(2)¹⁹ as answers to protests or answers to answers, because they clarify the concerns raised by the protestors in their initial filings, provide information that has assisted in our decision making, and admitting these pleadings will not cause any additional undue delay or burden for any parties.

19. We will deny WCPC's request for an evidentiary hearing. An evidentiary, trial-type hearing is necessary only where there are material issues of fact in dispute that cannot be resolved on the bases of the written record.²⁰ WCPC has not raised a material issue of fact that the Commission cannot resolve on the basis of the written record. As demonstrated by the discussion below, the existing written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. The Commission has satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submission in written form.²¹

III. Discussion

A. Natural's Abandonment Request

20. Since the facilities Natural proposes to abandon by sale are certificated facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonments are subject to the requirements of section 7(b) of the NGA.²² Section 7(b) of the NGA allows an interstate pipeline company to abandon jurisdictional facilities, or any service rendered by such facilities, if the abandonment is permitted by the "present or future public convenience or necessity."²³

21. Courts have explained that, in considering the criteria for abandonment under section 7(b), two important principles apply: (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation to continue to serve; and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public

¹⁹ 18 C.F.R. § 385.213(a)(2) (2014).

²⁰ See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012).

²¹ *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

²² 15 U.S.C. § 717f(b).

²³ *Id.*

interest will in no way be disserved by abandonment.²⁴ This does not mean, however, that abandonment is not permitted if there is any harm to any narrow interest. Rather, the Commission takes a broad view in abandonment proceedings and evaluates abandonment proposals against the benefits to the market as a whole.²⁵

22. When a pipeline company proposes to abandon jurisdictional facilities, continuity and stability of existing services are the primary considerations in assessing whether the public convenience or necessity permit an abandonment that will take the subject facilities and the capacity represented by those facilities permanently out of service. If the Commission finds that a pipeline's proposed abandonment of particular facilities will not jeopardize continuity of existing natural gas transportation services, it will defer to the pipeline's own business judgment.²⁶

23. In support of its application, Natural maintains that its firm customers with primary receipt points on Segment 1 have agreed to delete those receipt points and add receipt points on other parts of Natural's system. According to Brazos Electric's unopposed Notice of Conditional Withdrawal of Pleadings, Natural and Brazos Electric, the sole firm shipper with a primary delivery point on Segment 1, have agreed to terminate their firm transportation agreement.²⁷

24. Natural asserts that in order to continue service to its firm shippers on the Love County Lateral, which will be disconnected from Segment 1, Natural intends to build under its blanket certificate authority a 9-mile-long, 6-inch-diameter pipeline from its A/G Line to the eastern terminus of the Love County Lateral or otherwise connect the lateral to its existing system. Natural states that the proposed new line will be placed in

²⁴ See, e.g., *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960); *Transcontinental Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973).

²⁵ *Southern Natural Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990) (citations omitted).

²⁶ See, e.g., *Transwestern Pipeline Co.*, 140 FERC ¶ 61,147, at P 14 (2012) (finding that continuity of gas service was assured by proposal to relocate existing receipt and delivery points to adjacent parallel pipeline); *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,420 (2001) (finding that continuity of gas service for existing customers was assured by proposal to relocate existing receipt and delivery taps to remaining parallel gas pipelines).

²⁷ Brazos Electric March 31, 2015 Notice of Conditional Withdrawal and Pleadings at 2.

service prior to Natural disconnecting the Love County Lateral from Segment 1, thus providing shippers with continuity of natural gas transportation service.

25. In addition, Natural states that abandonment will eliminate the need for future capital expenditures by Natural for the facilities' repair, replacement, or abandonment in place, benefiting existing and future customers. Natural asserts that its proposal is in the public convenience and necessity because it will permit Natural to sell the underutilized Segment 1 Facilities to Devon for continued use in natural gas gathering. The proposal will result in minimal environmental impacts involved in physically separating Segment 1 from its mainline system, and will avoid redundant gathering line construction by Devon.

26. For the reasons described below, we grant Natural's proposed abandonment.

1. Continuity and Stability of Service

27. The impact on jurisdictional transportation service is a critical factor in the Commission's abandonment determination. In assessing continuity and stability of service, the Commission examines three criteria: the impacts to customers; whether the facilities are underutilized; and whether the facilities are integral to interstate service.²⁸ As discussed, where continued gas service will not be jeopardized, the Commission has permitted an interstate pipeline to justify an abandonment based on its business judgment.²⁹

a. WCPC and Targa Protests

28. WCPC and Targa are interruptible shippers on Natural's system. WCPC owns an 800-MW generation plant in Poolville, Parker County, Texas, which is connected to Natural's Segment 1 Facilities upstream of Natural's CS 155. Prior to 2013, WCPC was a firm shipper on Segment 1 with an MDQ of 30,000 Dth per day. WCPC's firm transportation agreement with Natural expired in October 2013, at which time WCPC ceased receiving firm service and became an interruptible shipper on Segment 1. Targa owns a processing plant in Wise County, Texas, and uses Segment 1 to transport residue gas from the plant to markets along Natural's interstate pipeline system. Targa's previous firm transportation agreements with Natural for 2,000 Dth per day and 20,000 Dth per day expired in 2010 and 2012, respectively. WCPC and Targa contend that they should be treated as if they were firm shippers because each alleges it would have

²⁸ See, e.g., *Gulf South Pipeline Co., LP*, 145 FERC ¶ 61,236 (2013).

²⁹ See, e.g., *Transwestern Pipeline Co.*, 140 FERC ¶ 61,147 at P 14; *Trunkline Gas Co.*, 94 FERC at 62,420.

retained firm service had Natural maintained Segment 1's pressure levels and that it later requested and was refused firm service.³⁰

29. WCPC asserts that if Natural's abandonment application is granted, WCPC's ability to meet peak-day full plant generation requirements will be jeopardized, as it will need to rely on its two remaining pipeline sources.³¹ In addition, WCPC claims that it will be deprived of access to lower-cost gas supplies from the Mid-Continent Region and will lose operational flexibility afforded by access to firm storage held on Natural's system by its marketing affiliate. WCPC also states that it will lose undepreciated asset costs associated with its 2000-2003 lateral pipeline construction, which connects WCPC's generation plant to Segment 1.³² Both WCPC and Targa argue that Natural was required to maintain or replace Segment 1 to provide service at certificated levels and both raise concerns regarding Natural's conduct in allowing Segment 1 to deteriorate.

30. Natural argues that interruptible shippers' interests do not provide a sufficient basis to deny abandonment.³³ Natural states that both WCPC and Targa allowed their firm contracts to expire and elected not to rollover or extend their contracts.³⁴ Moreover, Natural asserts that harm to WCPC's and Targa's interests would be minimal, since both have transportation alternatives and use little interruptible service. Natural asserts that its pressure reductions comply with the delivery pressure provisions of Natural's tariff, as well as the Facilities Agreement governing deliveries to WCPC's plant.³⁵ According to

³⁰ Targa states that it has continuously requested firm transportation service from Natural, but has been repeatedly rebuffed. *See* Targa October 1, 2014 Protest at 4 (Targa Protest). WCPC asserts that on July 30, 2014, after it modified its generation plant facilities to take natural gas deliveries at the lower pressure implemented by Natural, it requested 30,000 Dth per day of firm transportation service, which Natural denied. *See* WCPC October 1, 2014 Motion to Intervene and Protest at 3 (WCPC Protest); WCPC October 31, 2014 Motion for Leave to Respond to Answer of Natural at 7.

³¹ WCPC Protest at 3-4.

³² *Id.* at 5-6.

³³ Natural October 16, 2014 Answer to Protests (Natural Answer) at 5, 25-27, 29.

³⁴ *Id.* at 22, 29.

³⁵ *Id.* at 22.

Natural, WCPC only took deliveries on four days during 2014,³⁶ and Targa has not transported any gas on Segment 1 for interstate service since January 2014.³⁷

31. Natural also denies that it improperly refused WCPC's and Targa's requests for firm service. Natural explains that WCPC requested service under the same terms and conditions as its prior firm contract, which included a discounted price term. Natural argues it was not required to accept a request for capacity at the discounted price term in WCPC's prior firm contract.³⁸ In addition, Natural claims that its rejection addressed the path WCPC actually requested, which was not simply capacity within Segment 1, and there was insufficient capacity in the requested path.³⁹ Natural also claims that WCPC's July 30, 2014 request did not demonstrate a long-term commitment to receiving service from Natural, but rather was driven by recent price trends.⁴⁰ In response to Targa's claim that its requests for firm transportation capacity have been repeatedly rebuffed, Natural states that it simply provided Targa relevant information as to the operating condition and pressure on Segment 1.⁴¹ While Targa alleges in its protest that it "would gladly have retained its firm transportation capacity on the Segment 1 Facilities, had [Natural] agreed to maintain capacity at certificated levels of the Segment 1 Facilities,"⁴² Targa has never sought relief from the Commission alleging that it had made a bona fide request for firm service which was improperly rejected by Natural.

32. Finally, Natural denies WCPC's and Targa's negligence allegations. Natural asserts that it has maintained Segment 1 "pursuant to the high standards of its Integrity Management Program," and starting in 2006, began repairing and replacing pipe segments.⁴³ In 2011, when it became apparent that those measures were not effective to mitigate corrosion growth, Natural instituted a series of pressure reductions in order to

³⁶ *Id.* at 27-28.

³⁷ *Id.* at 31.

³⁸ *Id.* at 23.

³⁹ *Id.* at 23-24.

⁴⁰ *Id.* at 24.

⁴¹ *Id.* at 29.

⁴² Targa Protest at 4.

⁴³ *Id.* at 32.

manage risk. Natural claims that its pressure reductions reasonably followed its Integrity Management Program, PHMSA's regulations, and standard industry practice.

b. Commission Response

33. The Commission will not require a pipeline to retain unneeded jurisdictional facilities. In assessing that need, the Commission's "prime constituency" is any captive customer vulnerable to a pipeline's market power.⁴⁴ If no customers protest an abandonment proposal, the Commission will presume that existing customers are satisfied with their ability to receive service and they mutually agree to the abandonment.⁴⁵

34. The Commission relies on a lack of detriments to firm customers when determining whether to grant abandonment authority. The Commission is justified in doing so because firm customers pay most of a pipeline's fixed costs through reservation charges, regardless of whether the shippers use their reserved capacity or not.⁴⁶ In return, pipelines are under an obligation to provide service to firm customers that may be abridged only in very limited circumstances. Interruptible customers do not pay for fixed costs attributable to unused capacity. A pipeline's service to interruptible customers is secondary to the firm shippers' service. For these reasons, the Commission's primary focus is on abandonment impacts on firm customers, as compared to impacts on interruptible customers.⁴⁷

⁴⁴ *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1123 (D.C. Cir. 1996) (citations omitted).

⁴⁵ *Natural Gas Pipeline Co. of America*, 94 FERC ¶ 62,198, at 64,380 (2001).

⁴⁶ See *Trunkline Gas Co.*, 147 FERC ¶ 61,041, at P 10 (2014); *Gulf South Pipeline Co., LP*, 145 FERC ¶ 61,236 at P 61.

⁴⁷ In certain circumstances not presented here, the Commission will grant substantial weight to an interruptible shipper's request for continued service. For example, the Commission has denied abandonment based on interruptible shippers' protests where the pipeline provided only interruptible service and the facility costs were recovered through interruptible rates. *Transcontinental Gas Pipeline Corp.*, 110 FERC ¶ 61,337 (2005) (Transco II); *Transcontinental Gas Pipe Line Corp. LLC*, 129 FERC ¶ 61,255 (2009) (Transco III). Similarly, the Commission has denied abandonment if it would eliminate interruptible service to a captive end user. *Northern Natural Gas Co.*, 135 FERC ¶ 61,048 (2011).

35. The Commission declines to weigh either Targa's or WCPC's interests as if they were firm shippers. Each shipper allowed its firm service to expire and chose to rely on transportation alternatives, which still exist. Neither has alleged that it is, nor does either appear to be, a captive customer. Moreover, it appears that neither shipper has transported significant volumes of gas using interruptible service on Segment 1 or has expressed an interest in making a long-term commitment to use firm service in the future at maximum rates that would justify a substantial investment in repairs to or replacement of Segment 1. In a similar situation, the Commission approved a pipeline's abandonment proposal over the objections of interruptible shippers, observing that investors "do not construct an interstate pipeline or continue it in operation to serve only interruptible customers at discounted rates."⁴⁸

36. We also find that WCPC's and Targa's claims of negligence on the part of Natural are not supported by any evidence in the record. It appears that Natural performed adequate regular maintenance on Segment 1 and responsibly reduced pressure on Segment 1 in response to continuing deterioration.⁴⁹ There is no evidence that the pressure reductions prevented Natural from meeting any of its firm service obligations.⁵⁰

37. On the record presented, Natural's proposal to ensure continuity of service appears reasonable and meets the criterion for the public interest.

⁴⁸ *Trunkline Gas Co.*, 147 FERC ¶ 61,041 at P 24, n.40 (quoting *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,421 (2001)).

⁴⁹ See Natural December 9, 2014 Response to Data Request Nos. 4, 5, and 6. See also *Office of Consumers' Counsel, State of Ohio v. FERC*, 808 F.2d 125, 132 (D.C. Cir. 1987) (ruling that substantial evidence supported the Commission's rejection of deliberate non-repair claims.)

⁵⁰ While the record indicates that Natural posted information on its bulletin board sufficient to alert potential shippers of the possibility that the facilities in question (and the service provided on them) might ultimately be abandoned, we remind companies that their obligation to respond, pursuant to the terms of their tariffs, to requests for service continues unless and until modified by Commission order. At the same time, we note that an abandonment proceeding, where the issue before the Commission is whether the present or future public convenience or necessity permit the permanent cessation of service, is not the appropriate forum in which to seek relief from an alleged improper denial of service. If necessary, potential shippers can bring such situations to the Commission's attention by contacting the Commission's Compliance Help Desk, the Enforcement Hotline, or by filing a formal complaint.

c. The Love County Lateral

38. Natural proposes to abandon an 8-inch tap that directly connects Segment 1 to the Love County Lateral. The Love County Lateral has three existing customers with 3,300 Dth per day of firm service. To ensure continuity of service, Natural proposes to construct a 9-mile-long, 6-inch-diameter pipeline or otherwise connect the lateral to its existing system under its blanket authority prior to disconnecting the lateral from Segment 1.⁵¹ In the interim, Natural is exploring alternatives that would allow it to provide continued service to existing shippers. None of Natural's firm shippers on the Love County Lateral protested or otherwise commented on its proposed abandonment.

39. With Natural's assurances and the lack of firm customer protests, the Commission is satisfied that the proposed abandonment will not impact Natural's customers on the Love County Lateral. The Commission will approve Natural's proposal, conditioning the abandonment's effective date until such time as arrangements for continued service to the existing firm shippers on the Love County Lateral are in place.

2. Accounting

40. Natural submitted its proposed accounting for the abandonment by sale of its Segment 1 Facilities to Devon in Exhibit Y of the filing. Natural's proposed journal entries clear the abandonment by sale through Account 102, Gas Plant Purchased or Sold, and remove the original cost and related accumulated depreciation of the assets from its books, consistent with Gas Plant Instruction No. 5.⁵² The sale results in an estimated loss of \$15,966,071, which Natural proposes to record in Account 421.2, Loss on Disposition of Property, and record the current income taxes related to the loss on the sale in Account 409.2, Income Taxes Other Income and Deductions.

3. Environmental Review

41. The Commission also considers the environmental effects of its decision when considering abandonment. Natural states upon receipt of such abandonment authorization, it will sever the connections Segment 1 has with CS 801 and the Love County Lateral. Natural notes that the minor disturbance areas are in locations that have been previously disturbed and that all work will remain inside its right-of-way. Natural does not propose any facility removal in connection with the proposed abandonments.

⁵¹ Natural Application at 18.

⁵² 18 C.F.R. Part 201 (2014).

42. Because Natural's proposed abandonment will involve minimal ground disturbance to disconnect the subject facilities from the rest of its system, the proposal qualifies for a categorical exclusion and an environmental assessment was not prepared.⁵³

43. As discussed above, in order to continue to provide service to Natural's shippers on the Love County Lateral, Natural plans to construct a new 9-mile-long, 6-inch-diameter pipeline that would connect its A/G Line to the eastern terminus of the Love County Lateral or otherwise connect the lateral to its existing system. Natural asserts that the new line will be installed under Natural's blanket certificate authority.⁵⁴

44. Natural included in its application an environmental review related to the disconnect points on Segment 1 and construction of the 9-mile-long, 6-inch-diameter pipeline. Natural states that, based on coordination with appropriate agencies and undertaking any avoidance, minimization, and mitigation measures required if issues actually arise, it does not expect construction of the proposed new pipeline to have a significant environmental impact.⁵⁵

4. Conclusion

45. The Commission is satisfied that the Segment 1 Facilities are no longer essential to maintain firm natural gas service. The proposed abandonment will permit Natural to concentrate its efforts on those assets that are of greatest value to its firm customers, avoid costly expenses on an underutilized section of pipeline, and have a minimal environmental impact. Based on the record of this proceeding, the Commission finds that the proposed abandonment is permitted by the present or future public convenience and necessity, as discussed above and conditioned below.

B. Devon's Request for a Declaratory Order

46. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for the production or gathering of natural gas, or to gathering services.⁵⁶

⁵³ 18 C.F.R. § 380.4(a)(31) (2014).

⁵⁴ Natural Application at 18.

⁵⁵ *Id.* at 19.

⁵⁶ 15 U.S.C. § 717(b). The courts have narrowly construed the NGA section 1(b) exemption to "the physical acts of drawing gas from the earth and preparing it for the first stages of distribution." *Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 90 (1963)).

The NGA itself, however, does not define the term “gathering.” As a result, the Commission has developed a number of legal tests to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities. The Commission relies on the “modified primary function test,” which considers the physical and geographical attributes of a facility, including: (1) the length and diameter of the pipelines; (2) the facilities' geographical configuration; (3) the extension of the facilities beyond the central point in the field; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of a facility; and (6) the operating pressures of the pipelines.⁵⁷ In addition to the physical and geographical factors, the Commission also considers the purpose, location, and operation of the facilities; the general business activities of the owner of the facility; and whether the jurisdictional determination is consistent with the NGA⁵⁸ and the Natural Gas Policy Act of 1978 (NGPA).⁵⁹ The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.⁶⁰ The Commission also weighs any and all other relevant facts and circumstances of a particular case, including the non-physical criteria.⁶¹

47. We discuss below how the various criteria of the modified primary function test apply to the Segment 1 facilities as they will be operated by Devon. Of particular significance under the circumstances presented here is criterion No. 5, Location of Compressors and Processing Plants. Once the Segment 1 facilities are cut and capped from Natural's A/G Line⁶² Devon will fully integrate the facilities into its existing gathering system, which is located in a well-developed production area. Flow on the facilities will be reversed from its historic path such that local production will enter the pipeline and be delivered to the Bridgeport Plant. Thus, once integrated into Devon's gathering system, the Segment 1 Facilities will be located entirely behind the Bridgeport Plant, which, as noted below, is consistent with a gathering function.

⁵⁷ The primary function test was established in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

⁵⁸ 15 U.S.C. §§ 717-717z (2012).

⁵⁹ 15 U.S.C. §§ 3301-3432 (2012).

⁶⁰ *See, e.g., NorAm Gas Transmission Co.*, 75 FERC ¶ 61,127, at 61,429 (1996).

⁶¹ *See ANR Pipeline Co.*, 76 FERC ¶ 61,153 (1996).

⁶² The Segment 1 Facilities will be renamed the Bridgeport Gathering Facilities upon sale and transfer to Devon. For ease of understanding, we will continue to refer to the facilities at issue as Segment 1 Facilities.

1. Length and Diameter of the Line

48. Segment 1 is 92.3 miles long and 20 inches in diameter. Although relatively large for a gathering facility, these dimensions are not necessarily inconsistent with a gathering determination, when other factors, as discussed below, support a gathering determination.⁶³

2. Geographical Configuration

49. Gathering facilities generally fall into three types of geographic configurations. One is the web-like configuration commonly found in field gas gathering systems. The second configuration involves the backbone-type structure, which consists of a pipeline that connects to numerous feeding lines along its entire length. The third type of configuration consists of short pipelines that deliver gas from a few wells to generally larger-diameter downstream transmission facilities.

50. Rather than carrying processed gas from the Bridgeport Plant downstream for interstate transportation, as historically operated, the facilities will reverse flow to carry unprocessed wet gas to the Bridgeport Plant. Devon states that the Segment 1 Facilities are ideally located to enable the gathering of unprocessed gas production from: (i) the SCOOP formation; (ii) the Anadarko-Woodford production area located in Central Oklahoma which includes the multi-horizon play referred to as the STACK; (iii) the Mississippian Formation in Northern Oklahoma and Southern Kansas; and (iv) other producing areas along its route.⁶⁴ Devon plans to interconnect with area gathering systems operated by its affiliate, Enable Midstream Partners, LP, and other third-party gathering systems.⁶⁵ Thus, Segment 1 will constitute the backbone of a backbone-type configuration, which is consistent with a gathering determination.

⁶³ See, e.g., *TGGT Holdings, LLC*, 132 FERC ¶ 61,039, at P 17 (2010) (determining that a 20- to 30-mile long, 36-inch-diameter, pipeline, a 20- to 30-mile long 16- to 24-inch-diameter pipeline, and a 15-mile long, 16-diameter-pipeline crossing the Louisiana-Texas border are gathering facilities); *Straight Creek Gathering, L.P.*, 117 FERC ¶ 61,005, at P 13 (2006) (determining that a proposed 60-mile, 20-inch backbone pipeline would be gathering); *El Paso Natural Gas Co.*, 116 FERC ¶ 62,081, at 64,272 (2006) (approving a 84.43 mile, 20-inch-pipeline for abandonment and conversion to gathering); *ANR Pipeline Co.*, 76 FERC at 61,906 (determining that a 92-mile, 16-inch-pipeline segment was gathering).

⁶⁴ Devon Petition at 3-4.

⁶⁵ *Id.* at 6.

3. Location of Wells Along All or Part of a Facility

51. The location of wells along the length of a pipeline is generally indicative of gathering.⁶⁶ Currently, there are no wells directly connected to Segment 1. However, drilling permits have increased near the pipeline and several gathering operators are in the area. Two area natural gas gatherers and processors—DCP Midstream and Devon’s affiliate, Enlink Midstream Operating, LP—submitted comments in support of a gathering determination. Devon states that it anticipates directly connecting Segment 1 to existing and anticipated gathering lines that are connected to wells, which is consistent with a gathering determination.

4. Central Point in the Field

52. The central point in the field test is based on the idea that gathering involves the collection and movement of natural gas through various smaller lines to a central point where gas is delivered into a single large line for transmission. Any facilities located upstream of the central point are generally considered non-jurisdictional gathering facilities.⁶⁷ The central point in the field test is typically applied in situations where there is no processing plant.⁶⁸ In contrast, all of the facilities making up the back-bone type gathering system with Segment 1 will be located upstream of the Bridgeport Plant. The Commission has found that such a configuration does not lend itself to the central point in the field analysis.⁶⁹

5. Location of Compressors and Processing Plants

53. Once Devon acquires Segment 1 and connects it with other gathering lines, rich wellhead gas will enter the pipeline for processing at the Bridgeport Plant. Thus, the Segment 1 Facilities will be located entirely behind the Bridgeport Plant, which is indicative that these facilities will function as gathering. The Bridgeport Plant will separate the natural gas liquids from natural gas and deliver the liquids to a fractionator via pipeline, truck, or rail. The plant will use residue gas onsite or deliver it to Acacia

⁶⁶ See *EXCO Resources, Inc.*, 119 FERC ¶ 61,121, at P 17 (2007).

⁶⁷ *Barnes Transportation Co., Inc.*, 18 FPC 369 (1957) (establishing the “central point in the field” test).

⁶⁸ See, e.g., *TGGT Holdings, LLC*, 132 FERC at P 20.

⁶⁹ *Id.*

Natural Gas, LLC's (Acacia) pipeline, which interconnects with several intrastate pipelines and direct load customers,⁷⁰ for transportation.

54. Initially, there will be no compression on the Segment 1 Facilities. After making necessary pipeline upgrades, replacements, or repairs, Devon will operate Segment 1 with CS 155 when necessary. CS 155 is located just upstream of the Bridgeport Plant in Wise County, Texas. Devon states that booster compression may be needed to transport gas across Segment 1 and to deliver gas into the Bridgeport Plant. Compression needed to move gas through a system's gathering lines or at the inlet to a processing plant is not inconsistent with a gathering determination for the pipeline.⁷¹

6. Operating Pressure

55. Following acquisition of the facilities, Devon states that it will operate the facilities at their current operating pressures. After repairing, replacing, or upgrading portions of Segment 1, Devon will operate the facilities up to a Maximum Operating Pressure of approximately 936 psig.⁷² The Commission has found similar, relatively high operating pressures to be consistent with a gathering function.⁷³

7. Additional Considerations

56. As described above, the Commission also considers the purpose, location, and operation of the facilities; the general business activities of the owner of the facility; and whether the jurisdictional determination is consistent with the NGA and NGPA. These factors are secondary to the analysis of the pipeline's physical factors.⁷⁴

⁷⁰ Acacia's pipeline interconnects with two direct load customers—WCPC and Brazos Electric—and several intrastate pipelines—Atmos Pipeline-Texas, Enterprise Texas Pipeline, LLC, Enbridge Pipelines, and Energy Transfer Fuels, Inc. Pipeline. Devon Petition at 7.

⁷¹ See *Eagle Rock DeSoto Pipeline, L.P.*, 126 FERC ¶ 61,092, at P 15 (2009).

⁷² Devon Petition at 12.

⁷³ See, e.g., *KN Wattenberg Transmission Limited Liability Company*, 97 FERC ¶ 61,239, at 62,083 (2001) (finding that operating pressures of 980 to 1075 psi was consistent with a gathering function).

⁷⁴ See *Sea Robin Pipeline Co. v. FERC*, 127 F.3d 365 (5th Cir. 1997).

57. As explained above, Devon plans to reconfigure the Segment 1 Facilities to transport rich gas from South Oklahoma and North Texas to the Bridgeport Plant, which will deliver residue gas to Acacia's pipeline. According to Devon, Acacia's pipeline, as well as many of the interconnected pipelines, offer intrastate service and interstate service pursuant to NGPA Section 311. This configuration is consistent with a gathering determination.

58. In view of the above findings based on the information and representations in Devon's petition, we find under the primary function test that the back-bone type gathering system that Devon plans to operate will have a primary function of gathering exempt from the Commission's jurisdiction under section 1(b) of the NGA.

59. At a hearing held on June 18, 2015, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits thereto, and all comments submitted and upon consideration of the record,

The Commission orders:

(A) Natural's request to abandon facilities in Docket CP14-548-000, as described in this order and in the application, is granted subject to the conditions described herein.

(B) The abandonment authorization granted above will be effective upon implementation of arrangements addressing continuity of service for existing firm shippers on the Love County Lateral.

(C) Natural shall notify the Commission within 10 days of the date of its abandonment of facilities as authorized by this order. Natural shall complete authorized abandonments within one year from the date of this order.

(D) Natural shall submit its final accounting to clear Account 102, Gas Plant Purchased or Sold, with the Commission within six months of the date the sale is consummated, and the accounting submission must provide all the accounting entries related to the sale along with narrative explanations describing the basis for the entries.

(E) Devon's petition for a declaratory order designating the Segment 1 Facilities exempt under section 1(b) of NGA, as described in this order and in its application in Docket No. CP14-547-000, is granted.

(F) WCPC's request for an evidentiary hearing is denied.

(G) Brazos Electric's motion to conditionally withdraw its pleadings is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

**Appendix A
Timely Interventions**

CP14-547-000

- DCP Midstream, LP
- Enlink Midstream Operating, LP
- Targa Gas Marketing LLC
- Wise County Power Company, LLC

CP14-548-000

- Atmos Energy Corporation
- Brazos Electric Power Cooperative, Inc.**
- EnLink Midstream Operating, LP
- DCP Midstream, LP
- Devon Gas Services, LLC
- New Jersey Natural Gas Company
- Nicor Gas
- North Shore Gas Company, The Peoples Gas Light and Coke Company
- Targa Gas Marketing LLC*
- Wise County Power Company, LLC*

*Identifies intervenors that submitted a protest.

**Identifies an intervenor that submitted but later withdrew a protest.

Appendix B

Taps and Meters Proposed for Abandonment

Natural was authorized to construct and operate the following taps and meters on Segment 1 either in individual certificate proceedings or pursuant to its budget and/or blanket certificate authority:

- an 8-inch tap on Natural's Segment 1 in Wise County, Texas used to deliver gas to Brazos Electric's Jack Energy Facility in Jack County, Texas;⁷⁵
- an 8-inch tap on Segment 1 and 10 feet of 8-inch lateral connecting a well in Carter County, Oklahoma;⁷⁶
- a lateral consisting of a 0.3-mile 4-inch pipe, a 0.68-mile 6-inch pipe, a 4-inch tap, and a 4-inch meter attaching Segment 1 to the Joiner City Gas Field in Carter County, Oklahoma;⁷⁷
- a 4-inch tap and a 3-inch meter attaching Segment 1 to two wells in the Taffy Conglomerate Gas Field in Montague County, Texas;⁷⁸
- a 6-inch tap and a 6-inch meter connected to El Grande Pipeline Corporation (later known as Beane Energy Corporation) in Carter County, Oklahoma, which connected the Loco District Gas Field to Segment 1;⁷⁹
- a 4-inch tap and a 2-inch meter on Segment 1 that transported gas for Longhorn Natural Gas Company in Montague County, Texas;⁸⁰

⁷⁵ This is an active point on Segment 1.

⁷⁶ *Natural Gas Pipeline Co. of America*, 24 FPC 222 (1960). Natural has not used this tap since 1996.

⁷⁷ *Natural Gas Pipeline Co. of America*, 25 FPC 366 (1961). These facilities were placed in service on November 15, 1961, pursuant to Natural's budget certificate in Docket No. CP61-129. Natural has not used this tap since 1967.

⁷⁸ *Natural Gas Pipeline Co. of America*, 10 FERC ¶ 62,105 (1980). Natural has not used this tap since 1994.

⁷⁹ *Natural Gas Pipeline Co. of America*, 20 FERC ¶ 62,415 (1982). This tap was last used prior to 1994.

⁸⁰ Natural has not used this tap since 2008.

- a 6-inch tap and a 4-inch meter connected to Natural's Segment 1 in Wise County, Texas that received gas from Saginaw Pipeline Company, an intrastate pipeline;⁸¹
- a 10-inch tap connected to Natural's Segment 1 in Wise County, Texas in order to deliver gas to WCPC for use at its power plant in Poolville, Parker County, Texas;⁸²
- an 8-inch tap on Segment 1 in Montague County, Texas that received gas from Copano Field Services/North Texas, L.L.C. at the tailgate of its Saint Jo gas processing plant in Montague County, Texas;⁸³ and
- a 3-inch meter and a reutilized 2-inch tap connected to Natural's Segment 1 in Montague County, Texas in order to deliver fuel gas to Pecan Pipeline Company in Montague County, Texas.⁸⁴

⁸¹ See annual report filed in Docket No. CP94-489-000. Natural has not used this tap since 2000.

⁸² See annual report filed in Docket No. CP01-334-000. This is an active point on Segment 1.

⁸³ See annual report filed in Docket No. CP09-374-000. This is an active point on Segment 1.

⁸⁴ *See id.* This is an active point on Segment 1.